

For further information contact:

Virginia State Bar Lawyer Referral

1-800-552-7977

Division of Child Support Enforcement

1-800-468-8894

or on the Internet at

www.dss.virginia.gov/family/dcse.html

Family Access to Medical Insurance

Security (FAMIS)

1-866-87FAMIS

www.famis.org

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Child support, the courts and you

A Handbook for Parents



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Child support can be a very emotional issue for both parents and children. Unfortunately, frustration and anger are all too common emotions that can be associated with receiving, paying, or coming to court about child support. It does not have to be that way. This pamphlet gives basic information on child support and court procedures. If you have legal questions about child support, you may want to contact a lawyer. To find one in your area who handles child support cases, you can call the Virginia State Bar's Lawyer Referral Service at 1-800-552-7977. If you have a case with the Division of Child Support Enforcement (Division) and have questions, or wish to open a case, you should contact your local Division district office or call 1-800-468-8894. More detailed information can also be found at <http://www.dss.virginia.gov/family/dcse.html>.

WHAT IS CHILD SUPPORT?

Both parents are responsible for taking care of their child, even if the child lives with only one parent. The amount of money that parents need to raise a child is called "child support." The amount depends on how much money the parents earn and the costs of taking care of the child, and is set according to the child support guidelines. The parent who does not live with the child is called the "noncustodial parent;" the parent who takes care of the child on a daily basis is called the "custodial parent." Child support is different and separate from visitation or custody. If the child is in foster care or in the physical custody of someone else, both biological parents may be required to pay child support.

A court or the Division will order the noncustodial parent to pay "current child support" until the child turns 18, or if still a full-time high school student, until the child graduates or turns 19. If the child goes to live with the other parent or someone else, marries, joins the military, etc., the court may stop the current child support.

Even if the noncustodial parent is in jail, unemployed, etc., the current child support is still to be paid. Unpaid current child support becomes child support arrears, also known as "back support" or arrearages, and it **remains a legal, enforceable debt which cannot be forgiven or erased.**

Because the *duty* to provide support is owed to the child, neither the custodial parent nor the Division can:

- waive the payment of child support;
- forgive unpaid child support;
- negotiate or settle for a different amount of child support other than what is specified in the child support order; or
- return child support payments.

If the child receives public assistance, Medicaid, or is in foster care, the Division must be involved in the child support case, and the parents must cooperate with the Division's requirements. Either parent may open a case with the Division or take child support matters to court. The parent who opens the case with the Division may close the case at any time, unless there is money owed to the Commonwealth or another state. **A child support order remains in effect even though the case is closed with the Division.**

GETTING A CHILD SUPPORT ORDER

What has to be filed?

For a court to enter a child support order, it must have a petition and service of process on the other parent. A petition is the legal paperwork needed to start a court case. If there is already a child support order, and it needs to be changed, a motion must be filed with the court. "Service of process" is the legal notice given to the other parent about the child support case. Telling the other parent about the case is not enough; there are certain service or notification requirements for different types of cases. The court cannot act on your case until the other parent has received legal notice of the proceeding.

Where do you file?

Either parent or the Division can file a child support petition or motion with the court. If you want to file a petition or motion, go to the Juvenile and Domestic Relations District Court where you or the child lives. You will need to speak to either a staff member in the Intake Office or the Clerk's Office and fill out the necessary paperwork. Make sure you have a correct address for the other parent. There is no cost for filing a petition or motion.

Determining paternity

If paternity has not been decided by a court order or a statement acknowledging paternity, the court will need to decide who the father of the child is before addressing the issue of child support. "Paternity" is the legal determination of a child's father. It must be established by clear and convincing evidence through one of the following ways:

Genetic testing is a scientific way to determine paternity. Either parent, the court, the Division, or the child can request it at any time. Generally, the party who asks for the test has to pay for it. Any genetic test result of 98% or more probability of paternity is sufficient proof of paternity.

A statement of paternity is a voluntary, written statement made by the mother and father under oath in which they admit that the man is the father of the child. A properly completed statement of paternity has the same legal effect as a court order.

An adoption of a child can be shown by a court order or other evidence. In adoption cases genetic tests are not needed.

If the court decides that an individual is the father of a child, it may enter a paternity order. After paternity has been established, the court can enter a child support order.

Calculating child support

The court or the Division will calculate the child support guidelines based on the proof presented by the parents. This calculation is based upon:

- The number of children the noncustodial parent is the parent of with the custodial parent.

- Which parent the child lives with and for how many days a year. If the child lives with each parent for 90 days or more days a year, "shared" custody guidelines are run. If the parents have two or more children, and each parent has one or more children living with that parent, "split" custody guidelines are run. If the child or children live with only one parent, "sole" custody guidelines are run.
- The parents' average monthly gross income. "Gross income" is a person's total income from all sources before any deductions. It includes money from any jobs, investments, interest, spousal support received, etc. Gross income can include the value of goods or services received instead of wages. Items which do not qualify for gross income include:
 - A second job taken solely to pay off child support arrears.
 - Any sort of welfare payments or benefits.
 - Any child support received.
 - SSI payments from the Social Security Administration for the parent or child.

Sometimes it is necessary for the court to "impute" income if the person is unemployed or underemployed (not working a full workweek or working a lower-than-usual-paying job). To impute income the court calculates the parent's gross income based on past earnings or ability. If the parent's voluntary act causes a decrease in income – by quitting a job, causing himself or herself to be fired from a job, starting a new business that fails, going back to school, going to prison, etc. – the court may impute income.

After calculating gross income, the court will subtract any authorized deductions from each parent's income. Common deductions include:

- Spousal support paid per month by one parent to the other.
- Actual amount of current child support paid for other children.
- Credit for the parent's other children in his or her physical custody who are under the age of 18, not including stepchildren.

- Verified business expenses and a portion of the self-employment tax for self-employed parents.

After these deductions are considered, the court determines the amount of “adjusted income” for each parent. This adjusted income for each parent is then added together and cross-referenced on the child support guidelines table to find the total amount of child support due from both parents. To this total, the monthly average of any health insurance and daycare costs for the children on the support order (not the cost for the parents’ insurance or other children’s daycare costs) are added. This combined total is the amount of child support that is shared by the parents based on their financial contributions to the total combined income. Any money that the noncustodial parent pays directly for health insurance is subtracted from his or her share. The remaining amount is the child support obligation. The noncustodial parent’s child support, however, cannot be reduced below zero.

Example of sole custody child support calculation for one child:

\$ 2,000 = Mom’s adjusted monthly income
 + 2,000 = Dad’s adjusted monthly income
 \$ 4,000 = Total combined parent income

\$ 553 = Base amount of child support from guidelines table
 + 100 = Monthly average cost of child’s health insurance
 + 200 = Monthly average cost of child’s daycare
 \$ 853 = Total child support shared by both parents

Noncustodial parent’s percentage of combined income = 50%

\$ 427 = 50% of total child support
 - 0 = Noncustodial parent’s payment of health insurance
 \$ 427 = Noncustodial parent’s monthly child support obligation

For help calculating child support guidelines, visit the Division’s website calculator at: www.dss.state.va.us/family/dcse_calc.cgi

Shared and split custody guidelines are calculated in the same way, with the final amount being changed based on the type of custody. The child support order can be a:

- “unitary” order in which the amount of support paid remains the same regardless of the number of children to be supported; or
- “per child” order where the court specifies how much support is paid for each child.

The court order will also tell the noncustodial parent who to pay the money to and what percentage of unreimbursed medical expenses for the child he or she will have to pay to the custodial parent. **The effective date of the child support order is the date the petition was filed.**

If you are not satisfied with the judge’s decision, you can file an appeal to the circuit court. The order, however, remains in effect, and you must do what it says until it is changed by a court. **Parents may not ignore or change portions of the child support order.**

CHANGING A CHILD SUPPORT ORDER

Only a court can change a child support order. You can ask the court to make a change by filing a **motion**. The court can change the amount of support or allow for income withholding to pay the support. To change the amount of support, either parent or the Division may file a “Motion to Amend.” The court will hold a hearing to decide if the party asking for the change can prove that there has been a “material change of circumstances” since the previous child support order was entered. For the court to change its previous order, there must be a change in either the needs of the child or the ability of either parent to support the child. Some “positive” voluntary acts, such as either parent getting a better paying job, can serve as a basis for an increase in child support. “Negative” voluntary acts, such as either parent quitting a job, being imprisoned, or having subsequent children with another person, cannot serve as a basis for either an increase or decrease in child support.

If the court finds that a material change of circumstances has occurred, it will calculate the child support guidelines to see if the amount of child support changes. **The earliest effective date that the court can change the amount of child support is the date the motion was served on the other party.** If you are not satisfied with the judge's decision after a court reviews your case, you can file an appeal to the circuit court.

The other way a court often changes a child support order is to order income withholding. Income withholding takes money from the noncustodial parent's paycheck to pay his or her child support.

The court may order this if:

- the noncustodial parent requests it; or
- the parents agree to it; or
- there are child support arrears; or
- because of the noncustodial parent's past payment history.

An employer must honor an income withholding order and may not punish a noncustodial parent because of it. The employer may charge \$5 per withholding to handle the administrative costs of complying with the order. **Even with an income withholding order, the noncustodial parent is responsible for ensuring that the correct amount of child support is being paid on time to the right party, either the custodial parent or the Division as ordered.**

ENFORCING A CHILD SUPPORT ORDER

The court can **jail or fine** either parent for not following all of the requirements of the child support order. To enforce a child support order in court a Motion for a Show Cause Summons is filed. It can be filed by either a parent or the Division. It requires the other parent to "show cause" why the court should not punish

him/her for violating the court's order. **The court will enforce the order of child support as it is written, not how the parents interpret the order or how they have agreed the child support should be paid.** Either parent can hire his or her own lawyer to represent his or her interests in court. Some courts will offer to appoint a lawyer for a parent who cannot afford one. The parent, however, may have to reimburse the Commonwealth for the cost of the lawyer.

To comply with the child support order, the noncustodial parent must pay the correct amount of child support, on time, to the correct party. If the court ordered that payments be made through the Division, the noncustodial parent must pay through the Division and not directly pay the custodial parent.

At the hearing, the custodial parent or the Division must prove:

- there is a valid order of child support;
- the custodial parent did not receive the correct amount of support during the specified time frame; and
- how much child support ordered by the court has not been paid.

Once these things have been proven, the noncustodial parent has the burden to prove that it was impossible to comply with the child support order through no fault of his or her own.

Unacceptable reasons for not paying child support include:

- unemployment caused by a voluntary act of the noncustodial parent or refusal to actively seek full-time employment.
- lack of a paternity test prior to the entry of a child support order.
- lack of visitation with the child.
- failure of the Division to apply any payments made by the noncustodial parent to only one of his or her multiple child support cases.
- failure of an income withholding order to take enough money out of the noncustodial parent's paycheck to cover his or her child support obligation(s).
- illness or injury that does not result in a medically-documented inability to work.

For each “Show Cause Summons” issued by the court, the noncustodial parent can be jailed for up to 12 months. If you are not satisfied with the decision of the court, you can file an appeal to the circuit court. If the noncustodial parent files an appeal, there will be an appeal bond in the amount of the child support arrearages that must be paid within 30 days. If the bond is not paid, the appeal will not be heard by the circuit court. In addition, there may be an appearance or performance bond. The noncustodial parent may be able to get out of jail immediately by paying a “purge bond” set by the court.

There will be times, however, due to illness, injury, change in employment, etc., that a noncustodial parent can fall behind in making child support payments. If this happens, the noncustodial parent will need to immediately contact the court to change the child support order.